

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT
SARA ROBERSON:

JAMES B. ORGAN
Organ Law Offices, P.C.
Terre Haute, Indiana

ATTORNEY FOR APPELLANT
THOMAS ROBERSON:

KATHERINE A. CORNELIUS
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

PETE S. RAVENTOS
Spencer, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT CHILD)
RELATIONSHIP OF I.S.T.R., a minor child,)

SARA ROBERSON and THOMAS L.)
ROBERSON,)

Appellants-Respondents,)

vs.)

CLAY COUNTY DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 11A05-0603-JV-170

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Christopher A. Newton, Special Judge
Cause No. 11C01-0412-JT-274

September 14, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Thomas and Sara Roberson (the Robersons) appeal the trial court's order terminating their parental rights to their child, I.S.T.R., and raise the following restated and consolidated issue: Was there sufficient evidence to support the termination of their parental rights?

We affirm.

The facts favorable to the judgment are that I.S.T.R. was born to the Robersons on June 3, 2003. On September 19, 2003, Sara noticed I.S.T.R. was "fussy" and his leg was "bundled up in his belly." *Transcript* at 395-96. That day, Sara took I.S.T.R. to Union Hospital in Terre Haute. During I.S.T.R.'s first night at Union Hospital, Jacqueline Holder, D.O., a pediatrician, determined he had broken bones in both legs and one arm. Personnel at Union Hospital contacted the Clay County Department of Child Services (the DCS) because they suspected I.S.T.R.'s broken bones were the result of physical abuse. The Robersons denied being the source of I.S.T.R.'s injuries. Sara and her mother, Anita Wilson, suggested I.S.T.R. be transferred to Riley Hospital in Indianapolis, and Dr. Holder agreed because of the severity of I.S.T.R.'s injuries. The following day,

September 20, 2003, I.S.T.R. was transferred to Riley Hospital. I.S.T.R. remained at Riley Hospital until September 25, 2003, when he was removed from the Robersons' custody and placed in foster care, where he has remained since that date.

While in the custody of the Robersons, from June 3, 2003 to September 19, 2003, I.S.T.R. sustained approximately fifteen fractured bones, including a broken: (1) distal radius, the main bone in the forearm; (2) distal third metacarpal, a hand bone; (3) right proximal tibia, the shin bone; (4) periosteal reactions in the right proximal tibia, that is, tearing of the bone from the periosteum (a thick, cellular membrane that covers almost all bones); (5) ribs, "on the right, . . . the sixth, ninth, and tenth, on the left . . . the seventh . . ."; (6) distal ulna, a smaller bone in the forearm; (7) left thigh bone, on both the inside and outside of the knee; (8) left proximal tibia, the shin bone; and (9) periosteal reaction in the left proximal tibia. *Id.* at 130. The Robersons offered several possible explanations for I.S.T.R.'s injuries, including: (1) he rolled off of a bed while at his great-grandmother's house; (2) he was injured by their babysitter's son; and (3) he suffered from a "temporary brittle bone disease." *Id.* at 81.

Dr. Holder, however, observed that the fractures "themselves [were] just, just there were so many of them and some of them, of the long bones they [were] suspicious for non-accidental injury or trauma. So that it wasn't an accidental injury at least based on the radiology reports and the speciality reports that [the pediatricians] read." *Id.* at 106. Regarding the possibility that I.S.T.R. rolled off of a bed, Dr. Holder further stated, "[it] is impossible for a nine week old to do." *Id.* at 108.

Antoinette Laskey, M.D., a pediatrician who specializes in caring for and evaluating abused children and the chairperson of the Indiana Child Fatality Review Team, treated I.S.T.R. while he was at Riley Hospital. After conducting x-rays and examining I.S.T.R., Dr. Laskey concluded, “we don’t see these [fractures] from falls. . . . [For example], the rib fractures . . . along [I.S.T.R.’s] spinal column . . ., you can’t cause that by[] press[ing or] . . . CPR, the only way they could cause these injuries in, in rib cages, were by squeezing the chest, . . . by applying force.” *Id.* at 132. Several physicians, including Dr. Laskey and Peter Byers, M.D., conducted tests and inquired into the Robersons’ family medical histories in order to determine whether I.S.T.R. might have suffered from Osteogenesis Imperfecta (OI), a genetic bone disorder. None of the physicians that evaluated I.S.T.R. discovered a genetic bone disorder that would account for brittle bones. Dr. Laskey concluded I.S.T.R.’s injuries “were traumatic injuries, these were injuries that w[ere] inflicted upon [him].” *Id.* at 127. She further stated that, in her “firm medical opinion, . . . [o]ne of [I.S.T.R.’s] care give[rs] inflicted harm on him repeatedly over time. Many, many times.” *Id.* at 134-35. She was sure of this “[t]o a degree of medical certainty” *Id.* at 135. Finally, if I.S.T.R. had OI, Dr. Laskey “would be expecting the fractures to be increasing [with age]. . . . [Dr. Laskey] wouldn’t expect thirteen fractures at any given time” *Id.*

On October 2, 2003, the DCS petitioned the trial court and alleged I.S.T.R. was a Child In Need of Services (CHINS) because he suffered fifteen fractured bones by fourteen weeks of age. On October 10, 2003, the trial court appointed Jodi Shepard as I.S.T.R.’s Court-Appointed Special Advocate (CASA). Lee Ann Thomas replaced

Shepard as I.S.T.R.'s CASA in late fall of 2004. On June 16, 2004, the trial court concluded I.S.T.R. was a CHINS "due to the acts . . . of [the Robersons] resulting in the serious endangerment of his physical health as evidenced by multiple bone fractures which were the result of physical abuse." *Appellee's Appendix* at 12.

After I.S.T.R. was removed from the Robersons' custody, Tara Williams, executive director of the Family Service Association, performed a custody evaluation of the Robersons at their request. Williams worked with the Robersons from November 17, 2003 until August 24, 2004. During that time, Williams conducted "psychological testing, interviews, history taking, collateral interviews, home visits and then observation of the child." *Transcript* at 41. Williams also performed a Minnesota Multiphasic Personality Inventory-2 (MMPI2) test on the Robersons. "Based on the MMPI2 and the observation[s] and conversations that [Williams] had with [the Robersons], there w[ere] obviously some issues there . . . involving anger" *Id.* at 42. Williams concluded the Robersons should not have custody of I.S.T.R.

In August 2004, Sheila Kirkman, a clinical therapist, began working with the Robersons, which included supervising visitations between the Robersons and I.S.T.R.

There was [] one occasion that caused [Kirkman] concern. . . . [The Robersons] and [I.S.T.R.] [were] there. And they were on the floor and [I.S.T.R.] was sitting in Sara's lap. And frequently she would have him on her lap and she was kinda holding [I.S.T.R.] with her hands on both legs. So [Kirkman] turned around to adjust the thermostat and [she] heard Sara say, ["O look [Kirkman's] not looking,["] and suddenly [I.S.T.R.] let out a wail, unlike you normally hear. It was just really a terrific wail [and] [Kirkman] became alert, [she] turned around, there was an inappropriate affect on Sara's face. There was an odd smile, it was different than what you would anticipate. You would anticipate somebody reacting alarmingly to a child. [I.S.T.R.] continued to wail.

Id. at 167.

Beginning in September 2003, Teresa Sebeck, a homemaker with the CCFCFS, also conducted supervised visitations with the Robersons. The Robersons purposefully obstructed Sebeck's view approximately twenty times during the course of her supervised visits. "[T]here was unexplained crying . . . [during] [h]alf of the [one-hundred and fifty-three] visitation[s]." *Id.* at 238.

Periodically through the two years [Sebeck] supervised visitation [she] would repeatedly have to ask to be in clear view of the child. [I.S.T.R.] [at] different times during the visitation had cried without there being a reason. Where [her] view was obstructed [I.S.T.R. became] very, very upset very quickly [and it] was unexplainable. At one time[, in approximately March 2005,] [Sebeck] even stripped him after a visitation and there was red marks on his legs. Because [she] couldn't explain why [I.S.T.R.] was so upset or crying.

Id. at 228. During another supervised visit, Sara's grandfather "showed [Sebeck] his purple heart in a frame and told [her] that he had killed people for less than this." *Id.* at 227. Concerned by these incidents, Sebeck asked that the Robersons' visits with I.S.T.R. be terminated. The Robersons are no longer attending counseling.

When I.S.T.R. was placed in foster care, he had fifteen fractured bones, his chest was swollen, and he could not lift his left shoulder. I.S.T.R. has not suffered any fractured bones since he was removed from the Robersons' custody, and his physical condition has steadily improved during that time. On December 28, 2004, the DCS petitioned the trial court for the involuntary termination of the parent-child relationship of the Robersons and I.S.T.R. Following a hearing, the trial court terminated the parent-

child relationship. The Robersons appeal.¹ Additional facts will be provided when necessary.

The Robersons contend there is insufficient evidence to support the trial court's order terminating their parent-child relationship with I.S.T.R. The Fourteenth Amendment to the U.S. Constitution protects parents' rights to establish a home and raise their children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). Parents have a fundamental liberty interest in the care, custody, and control of their child, and the parent-child relationship is "one of the most valued relationships in our culture." *Id.* at 147. Parental interests, however, are not absolute, and are subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143. Parental rights, therefore, may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.*

We will not set aside a trial court's order terminating a parent-child relationship unless it is clearly erroneous. *Castro v. State Office of Family & Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006), *trans. denied*. We neither reweigh the evidence nor judge the witnesses' credibility. *Id.* Rather, we consider only the evidence most favorable to the judgment and any reasonable inferences drawn therefrom. *Id.* Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2006 Public Laws approved and effective through

¹ Sara and Thomas Roberson appeal separately the trial court's termination of their parent-child relationships with I.S.T.R. Their contentions on appeal, however, are virtually identical, and we address them collectively.

March 15, 2006) requires that a petition to terminate a parent-child relationship involving a CHINS allege:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The DCS bears the burden of proving these statutory criteria by clear and convincing evidence. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143. Clear and convincing evidence need not reveal that the parents' custody is wholly inadequate for the child's very survival. *Id.* Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the parents' continued custody. *Id.* In this regard, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical growth is permanently impaired before terminating the parent-child relationship. *Haney v. Adams County Office of Family & Children*, 832 N.E.2d 563 (Ind. Ct. App. 2005).

The Robersons contend numerous findings noted by the trial court are unsupported by the evidence, or, alternatively, they do not support its conclusions of law. Even if the Robersons are correct that the trial court based its decision to terminate their parental rights on deficient findings, erroneous findings will not prove fatal provided there exist at least some valid findings to support the trial court's conclusions. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. Where, as here, the trial court entered findings of fact, a two-tiered standard of review is employed. *Castro v. State Office of Family & Children*, 842 N.E.2d 367. We initially determine whether the evidence supports the findings. *Id.* We next determine whether the findings support the judgment. *Id.* A trial court's judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.* Further, findings of fact are not reviewed individually. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244. Rather, we review them in their entirety to determine if they support the trial court's legal conclusions or if they constitute an abuse of discretion. *Id.*

As previously stated, in order to terminate the parent-child relationship, the DCS was required to present clear and convincing evidence sufficient to satisfy its statutory burden pursuant to I.C. § 31-35-2-4(b)(2). The trial court concluded, and the Robersons concede, that I.S.T.R. has been removed from their custody and has been under the supervision of the DCS for at least fifteen of the previous twenty-two months to satisfy I.C. § 31-35-2-4(b)(2)(A)(iii). The DCS was also required to establish by clear and convincing evidence that there was a reasonable probability that "the conditions that

resulted in [I.S.T.R.’s] removal or the reasons for placement outside the home of the parents [would] not be remedied.” I.C. § 31-35-2-4(b)(2)(B)(i). In order to make this determination, the trial court should judge the Robersons’ fitness to care for their child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244. Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities. *Id.* Pursuant to this rule, the trial court must evaluate the Robersons’ habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *Castro v. State Office of Family & Children*, 842 N.E.2d 367.

The “condition” that resulted in I.S.T.R.’s removal from the Robersons’ home was that he had fifteen fractured bones at the age of fourteen weeks old. Despite the Robersons’ explanations to the contrary, physicians concluded I.S.T.R.’s fifteen fractures resulted from physical abuse intentionally applied by a caretaker. Yet, in the face of this overwhelming medical evidence, the Robersons continued to deny that I.S.T.R. was physically abused. Even at the termination hearing, Sara Roberson alleged that her eighty-year-old grandmother “may have handle[d] [I.S.T.R.] inappropriately or possibl[y] tripped or . . . lost her balance, and hit doors or she has arthritis in her hand and maybe handled him to[o] roughly [or] . . . something to that effect.” *Transcript* at 436. The following exchange further reflects her denial:

Q. Do you understand that[] [there] were broken bones that w[ere] caused by physical abuse?

A. I understand that[] that was substantiated.

Q. No, . . . I'm asking you . . . , do you believe that those fifteen or more fractures . . . were the result[] of abuse?

A. I believe that[] that is a possibility

Q. I didn't ask you that. Based on the evidence that you have from the doctors . . . , [i]ncluding the DNA test . . . and Dr. Laskey['s] [testimony] . . . that to a medical certainty [I.S.T.R.] suffered fifteen fractures caused by someone who cared for him[,] [d]o you accept [that I.S.T.R. was abused]?

A. I, I accept that she made the diagnosis

Id. at 431-33. Contrary to the Robersons' contentions, the record overwhelmingly reveals that the Robersons continued to deny that I.S.T.R. was abused, that they were uncooperative in efforts to progress toward reunification, and were not attending any form of counseling at the time of the termination hearing. Sara Roberson refused to go to parenting classes because she did not think she needed them. Kirkman, the Robersons' clinical therapist, stated the Robersons made no progress toward reunification, and did not believe they were any closer to reunification than they were one year ago. Linda Airhart, a family case manager for the DCS, stated the Robersons are further away from reunification than when they started counseling. We cannot, therefore, say the trial court committed clear error when it found that there was a reasonable probability that the conditions leading to I.S.T.R.'s removal from the Robersons' home will not be remedied.

The Robersons also contend the DCS failed to present clear and convincing evidence that termination of their parent-child relationship is in I.S.T.R.'s best interests. "A parent's historical inability to provide adequate . . . supervision coupled with a current

inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *Castro v. State Office of Family & Children*, 842 N.E.2d at 374. As noted, Drs. Holder and Laskey concluded that, to a medical certainty, I.S.T.R.'s fifteen fractured bones resulted from intentionally-applied physical trauma. All fifteen fractured bones occurred while I.S.T.R. lived in the Robersons' home. Since his removal from the Robersons' home, I.S.T.R. has had no fractured bones or traumatic injuries of any kind. Keeping in mind that the purpose of terminating parental rights is not to punish parents but to protect children, two additional factors weigh in favor of the trial court's conclusion that the termination of the Robersons' parental rights is in I.S.T.R.'s best interests: (1) I.S.T.R. is in need of stability and permanency; and (2) I.S.T.R. is doing well in his current placement. *Id.* The trial court's conclusion that termination of the Robersons' parental rights is in I.S.T.R.'s best interests is supported by clear and convincing evidence and, therefore, is not clearly erroneous.

Finally, the Robersons contend the trial court's finding that the DCS has a suitable plan for I.S.T.R.'s care is clearly erroneous. In order for the trial court to terminate the parent-child relationship, it must find that there is a satisfactory plan for the care and treatment of the child. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id.* I.S.T.R. initially resided in a foster home, and was then placed with foster parents who were interested in adoption but were not ready to make a final decision. The DCS's plan was for I.S.T.R. to be adopted by the current foster family. The DCS offered a plan that

gave a general sense of direction for I.S.T.R.'s care and treatment. The trial court's finding that the DCS has a suitable plan for I.S.T.R.'s future care, therefore, is not clearly erroneous. *See id.*

Judgment affirmed.²

NAJAM, J., and DARDEN, J., concur.

² The Robersons contend the trial court's findings of fact were unsupported by the record in several other respects. Thomas essentially contends the trial court penalized him for refusing to testify. Although the trial court found "Thomas . . . wished to assert his Fifth Amendment right not to testify", it is clear the trial court did not penalize Thomas for exercising that right. Further, the Robersons contend the trial court erred when it noted they refused Kirkman's requests to submit to a polygraph test or undergo hypnosis. Kirkman, however, did not make those requests for the purpose of obtaining admissible evidence, but rather as therapeutic devices to deal with the Robersons' continued denials that I.S.T.R. was physically abused. The trial court's finding in this regard merely acknowledged such as additional evidence that the condition that led to I.S.T.R.'s removal from their home had not been remedied.